

**From:** Keith Anderson  
**To:** Microsoft ATR  
**Date:** 1/23/02 12:24pm  
**Subject:** Microsoft Settlement

January 23, 2002

Judge Colleen Kollar-Kotelly  
US District Court for the District of Columbia

Comments about US v. Microsoft proposed settlement

I feel the remedies suggested by the proposed settlement do little to deter or punish Microsoft for actions and behaviors proven to be anticompetitive and illegal. Most egregious in my mind, however, is the position Microsoft will be in to stifle and lock out the Open Source movement.

As a developer of Internet solutions, I am quite familiar with the long and brutal conflict between Open Source tools and Microsoft tools and the gulf created between the two camps. Microsoft has been making steady inroads to the server and Internet markets simply by the virtue of their monopolistic position. By breeding ubiquity in the desktop market, they have orchestrated lock-in to the server market using closed and inoperable APIs, proprietary protocols and (even worse) embracing open protocols and modifying them with non-open extensions. All of these tactics are designed to put third party, and specifically, Open Source tools at a disadvantage when used with their desktop systems.

The settlement stipulates that Microsoft open "the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product" (section D) as well as "any Communications Protocol that is, ... (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate natively ... with a Microsoft server operating system product" (section E). Both sections are a step in the right direction and force Microsoft to allow independent developers the ability interoperate with Microsoft systems freely.

However, section J.2 limits this condition by requiring that for anything related to "anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms", a third party developer must meet these requirements in order to gain access to said information:

(a) has no history of software counterfeiting or piracy or willful violation of intellectual property rights,

(b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product,  
(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business,  
(d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification

These conditions are applicable to businesses and for-profit entities, but specifically lock out any Open Source projects or anyone who does not have 'reasonable business needs'. Additionally, with Microsoft focusing on its new '.NET' strategy of distributed application programming, almost EVERY aspect of development will fall under 'authentication/authorization security' since almost EVERY aspect of the protocol, API or documentation will run across public, untrusted networks.

Given Microsoft's record of finding miniscule loopholes in past judgements and exploiting them to further their control and flout the law, this one strikes me as particularly onerous (not to mention ironic). It wouldn't surprise me to learn that Microsoft's complicity with this proposed settlement is based quite largely on the fact that .NET will make the entire thing moot on this point, and at the same time provide an absolutely crushing blow to the Open Source movement which they deem such a threat.

I sincerely hope that this settlement is rejected or at least amended to address these concerns. Thank you for your time.

Sincerely,  
Keith M. Anderson

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